

REMARKS

This Paper is submitted in response to the final Office Action mailed August 25, 2005 with a shortened statutory response period that ends on November 25, 2005. This paper is submitted within two months of the Office Action mail date, namely October 25, 2005. The Commissioner is hereby authorized to charge any additional fees to Deposit Account number 02-1818.

Claims 1-11, 13-33 and 35-41 are pending in this application. Applicant notes the discrepancy between the Office Action cover sheet which indicates claims 1-11 and 13-33 are pending whereas the actual pending claims are claims 1-11, 13-33 and claims 35-41.

Applicant respectfully requests that this Paper be entered as 1) it places the claims in a condition for allowance and 2) requires only a cursory review by the Examiner. Applicant notes that claims 179-191 of copending application serial number 09/917,136 have been canceled rendering moot the alleged obviousness-type double patenting rejection set forth in the February 22, 2005 Office Action.

Claims 1, 9-11, 13-23, 31-33 and 35-41 were rejected under 35 U.S.C. §103(a) as being obvious over International Publication No. WO 95/13918 to Rosenbaum (*Rosenbaum*) in view of European Patent Application No. 556,034 to Sudo (*Sudo*). Claims 1-3, 7-8, 13-25, 3 and 35-41 were rejected under 35 U.S.C. § 103(a) as being obvious over *Rosenbaum* in view of U.S. Patent No. 5,928,740 to Wilhoit et al. (*Wilhoit*).

Applicants respectfully traverse and disagree with these rejections as *Rosenbaum*, *Sudo* and *Wilhoit*, either alone or in combination, fail to teach or suggest a film layer having a first ethylene- α -olefin component with more ethylene than α -olefin and a density of less than 0.915 g/cc, the ethylene- α -olefin present in an amount of 55%-99% by weight of the blend and a second component present in an amount of 1%-45% by weight of the blend as recited in the present claims. *Rosenbaum* discloses a four component radio frequency susceptible layer (RF layer) having a polypropylene copolymer present in an amount of 30-60% by weight of the layer and an ethylene- α -olefin component present in an amount of 25-50% by weight of the layer. *Rosenbaum*, p.10 lines 31-36. *Rosenbaum*'s four component RF layer teaches away from the blend composed solely of two components as recited in the claims. Moreover, *Rosenbaum*'s

polypropylene copolymer contains less ethylene (0-6% by weight) than propylene and thereby teaches away from the recited ethylene- α -olefin component that contains more ethylene than α -olefin. Moreover, *Rosenbaum*'s ethylene- α -olefin component is present in an amount of 25-50% by weight of the layer and thereby fails to teach or suggest the recited ethylene- α -olefin component that is present from about 55-99% by weight of the blend. Furthermore, *Rosenbaum*'s RF layer requires an RF susceptible component composed of materials wholly absent in the recited two component blend. *See Rosenbaum*, page 11 line 9 through page 12 line 8. As 1) *Rosenbaum*'s four component layer teaches away from the recited blend composed solely of two components, 2) *Rosenbaum*'s polypropylene copolymer teaches away from the recited first component, 3) the amount of the ethylene- α -olefin in *Rosenbaum*'s RF layer fails to teach or suggest the amount of first component present in the recited blend, and 4) *Rosenbaum*'s requisite RF susceptible component that is wholly absent in the recited two component blend, *Rosenbaum* does not teach or suggest the subject matter recited in the present claims.

Sudo fails to fulfill the deficiencies of *Rosenbaum*. *Sudo* discloses a cyclic resin composition that may be mixed with an olefin resin. *Sudo*, page 9 lines 36-39. *Sudo*, however, has no disclosure whatsoever regarding 1) a polymeric blend having 55%-99% by weight of an ethylene- α -olefin copolymer, let alone 2) an ethylene- α -olefin having a density less than about 0.915 g/cc. Furthermore, one of ordinary skill in the polymer chemistry art would recognize that selection of a particular polymer component with a particular density entails more than routine experimentation. It is understood that when multiple polymers are blended, it is difficult to achieve all desired objectives simultaneously. *See* present application at page 6 lines 10-18. Indeed, it is often the case that blending individual polymeric components results in a polymer blend having the worst features of each individual component with the results being a material of such poor properties as not to be of any practical or commercial value. *See* U.S. Patent No. 4,110,303, col. 1 lines 29-36. Thus, one of ordinary skill in the polymer chemistry art would appreciate that a disclosure, such as *Sudo*, that is wholly silent regarding the density of any component fails to teach or suggest an ethylene- α -olefin with a density less than 0.915 g/cc. *Sudo* lacks any disclosure whatsoever regarding a density for the olefin resin, and consequently does not teach or suggest an ethylene- α -olefin with a density of 0.915 g/cc. As *Sudo* fails to

disclose 1) the amount of the olefin resin present in the blend and 2) a density for any of the potential blend components, *Sudo* fails to fulfill the deficiencies of *Rosenbaum*.

Wilhoit teaches away from 1) a blend composed solely of a first and second component and 2) a single ethylene- α -olefin component as recited in the present claims. *Wilhoit* discloses a polymeric blend that requires a three component blend. *Wilhoit*, col. 7 lines 7-9. At least two of *Wilhoit*'s requisite three components are ethylene- α -olefin copolymers. *Wilhoit*, col. 7 lines 7-23, col. 7 lines 40-43, col. 7 lines 59-61, col. 8 lines 27-30. Consequently, *Wilhoit*'s three component blend of at least two different ethylene- α -olefin copolymers teaches away from 1) the blend composed solely of first and second components and 2) a single ethylene- α -olefin copolymer as recited in the present claims.

The individual teaching away by each of *Rosenbaum* and *Wilhoit* is a *per se* demonstration of non-obviousness. *In re Dow Chemical Co.*, 837 F.2d 469 (Fed. Cir. 1988). Thus, any alleged rejection based on *Rosenbaum* and/or *Wilhoit* is *per se* non-obvious. In addition, *Sudo* fails to fulfill the deficiencies of *Rosenbaum*. Consequently, no combination of *Rosenbaum*, *Sudo*, and/or *Wilhoit* teaches or suggest the subject matter recited in the present claims.

For the foregoing reasons, Applicants respectfully submit that the present application is in condition for allowance and earnestly solicit reconsideration of same.

Respectfully submitted,
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